Supreme Court of the United States

OCTOBER TERM, 1948.

No. 244

LIONEL G. OTT, Commissioner of Public Finance and Ex-officio City Treasurer of the City of New Orleans, Et Al,

Appellants,

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY, AMERICAN BARGE LINE COMPANY AND UNION BARGE LINE CORPORATION.

Appeal from the United States Circuit Court of Appeals for the Fifth Circuit.

REPLY BRIEF ON BEHALF OF APPELLANTS.

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MAY IT PLEASE THE COURT:

In the interest of clarity, and to eliminate confusion, appellants file this reply brief, as appellants must necessarily take issue with certain points and allegations set forth in appellees' brief.

AS TO THE JURISDICTION OF THIS COURT.

Appellees would tell this Court in their brief ("Statement of the Case"—p. 4) that, because another case in the Circuit Court of Appeals (DeBardeleben Coal Corporation) was decided in favor of present appellants, that the United States Circuit Court of Appeals and the United States District Court, did not, in effect, hold this Louisiana Statute unconstitutional. We must take sharp issue with this reasoning, and the statement upon which it is based.

In the first place, the *DeBardeleben* case is not before this Court and the facts and opinion therein are *dehors* this record. We dislike to discuss anything outside the transcript, but, because appellees have made certain bold statements regarding this extraneous matter, we feel it necessary to accurately explain the point.

The decisions of the lower Courts, as to the *DeBardeleben* case, of course, speak for themselves.

The District Court, in its "Conclusions of Law" (68 Fed. Sup. p. 52) sets forth:

"

"6. The tax situs of **all** of the DeBardeleben Coal Corporation's Coyle Lines watercraft employed in its common carrier water transportation operations out of the port of New Orleans, was in the State of Louisiana **alone.** (Emphasis supplied.)

"

"8. The attempted assessment of any of the taxable movable property of Coyle Lines (DeBardeleben),

which had its sole taxation situs within the State of Louisiana, as that of a transportation company whose 'line' lay partly within that state and partly within another state or states, was illegal, null and void.

"9. The taxes exacted thereunder, from DeBardeleben Coal Corporation, were illegal.

". . . . ."

The District Court, in its opinion, upon which the above Conclusions of Law are based, stated that the Louisiana Statute in question "apparently envisaged no such factual situation as existed" with reference to DeBardeleben (68 Fed. Sup. p. 49).

Obviously, then, the District Court did not apply the Louisiana Statute (Act 52 of 1932 as amended by Act 59 of 1944) to the *DeBardeleben* case, but held it inapplicable as to that isue.

Upon appellants showing the Circuit Court of Appeals that upon such a finding of fact (DeBardeleben's watercraft having its sole situs in Louisiana), Louisiana was entitled to any share of such taxes it chose to assess, of course, the Circuit Court of Appeals decided in favor of appellants as to DeBardeleben (166 Fed. 2nd p. 514). This was upon the theory that any tangible property found to have its sole taxing situs in one State, could be taxed under the general taxing laws of such State, the same as domestic property, without regard to a special tax apportionment Statute such as the one under consideration here.

Thus, the Circuit Court of Appeals did not, as appellees would have this Court believe, uphold the constitutionality of this special statute of tax apportionment in the *DeBardeleben* case, but allowed Louisiana to collect its taxes in that case under its general taxing power over property all of which is permanently located in one State, and for which collection it needs no special Statute. It only remanded the case to the District Court to ascertain if any property in an outside State was included in the assessment, and if so, to exclude that amount.

The above facts speak for themselves.

Clearly, then, the Circuit Court of Appeals did not uphold the constitutionality of this tax apportionment Statute in one case, but on the contrary did not apply it in that case. Conversely, the Circuit Court of Appeals has, in effect, as to these cases now before the Court, denied the constitutionality of the Louisiana Statute (Act 59 of 1944) and held it repugnant to the Constitution of the United States, which gives rise to this appeal, as a matter of right (Judicial Code, Section 240, as amended—Title 28 U. S. C. A. Section 347 (b))—all as more fully set forth in our original brief.

Significantly, appellees in their summation of this point in their brief (p. 6), state that the statute is unconstitutional!

ARGUMENT.

As to the appellees' argument in their brief, very little need be said. The suppositions and analogies sought to be drawn are not at all consonant with the facts.

Louisiana, obviously, would not attempt to declare a situs in that State for property which visited infrequently or spasmodically but the Statute was intended to cover and actually covers here, an average portion of property permanently within the State—and by permanently is meant throughout the taxing year.

The Statute was intended to cover, and actually covers, interstate operations just such as performed by these three barge lines. They run their "lines" into Louisiana day in and day out, week in and week out, and year in and year out, and while "lines" has a well recognized meaning it has even been defined by the Courts of this land:

> "Webster's New International Dictionary, 2d Ed., p. 1435 gives as one of the definitions of 'line'—'A number of public conveyances, as carriages, or **vessels, plying regularly under one management over a certain route;** and the word **'route'** is defined as **'A trodden or usual way.'**" (Emphasis supplied.)
>
> *(Tuggle v. Parker (1945) 159 Kan. 572, 156 P. (2d) 533.)*

In *Bruce Transfer Co. v. Johnson* (1939) 287 NW 278 the Iowa Supreme Court held that the trucks operated by the defendant transfer company constituted a "line

of cars" covered by a particular statute. The Court quotes the Century Dictionary as follows:

> "A series of public conveyances, as coaches, **steamers, packets** and the like, **passing to and fro between places with regularity.**" (Emphasis supplied.)
>
> "'Stage line,' 'railroad line,' and 'automobile line', are expressions which are ordinarily understood to mean a regular line of vehicles for public use operated between distant points."
>
> *Commonwealth v. Walton (1907) 126 Ky. 523, 104 SW 323.*
>
> "In railroad parlance, 'a line' is an operating unit under one management over a designated way, or right of way."
>
> *Regenhardt Const. Co. v. Southern Ry. Co. (1944) 297 Ky. 840, 181 SW (2d) 441.*

THE LAW.

We have no argument with any of the cases cited by appellees. Wherever they apply, appellants' position is sustained and appellees' position made untenable.

It is amazing that appellees rely so heavily upon *Johnson Oil Co. v. Oklahoma,* 290 U. S. 158. This case substantiates all of the contentions of appellants to tax only the **average** property **wholly** within Louisiana as contradistinguished from attempting to tax the entire fleet.

The vessel taxation cases cited are not applicable here. The watercraft in the present cases is **never** entirely absent from Louisiana as in the case of individual ships or vessels, which visit for a fractional part of a year.

CONCLUSION.

Frankly, in the main, we are unable to understand appellees' argument. Generally speaking, it is not at all consonant with the admitted facts and the issues presented here.

Appellants have endeavored to reduce this problem to its simplest terms. We have shown the Louisiana Statute to be clearly constitutional, and therefore respectfully pray that the judgments of the Circuit Court of Appeals for the Fifth Circuit be reversed in each of these nine cases, and that judgment be entered in favor of the City of New Orleans and State of Louisiana, appellants herein.

Respectfully submitted,

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CERTIFICATE.

This is to certify that copies of this Brief have been served on opposing counsel on this the ..... day of December, 1948.

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